

RULES
OF
DEPARTMENT OF COMMUNITY AFFAIRS
110-9 JOB TAX CREDIT PROGRAM

CHAPTER 110-9-1
JOB TAX CREDIT PROGRAM REGULATIONS

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110-9-1-.01 Introduction and Definitions. Amended

(1) **Authority for Regulations.** Official Code of Georgia Annotated Section 48-7-40, Section 48-7-40.1, Section 48-7-40.23, and Section 36-62-5.1.

(2) **Administrative Agencies.** The Georgia Department of Community Affairs (DCA) and the Georgia Department of Revenue have been designated as the responsible agencies within the State of Georgia to administer the Job Tax Credit Program for less developed areas.

(3) **Program Purpose.** The purpose of the Job Tax Credit Program is to encourage the further economic development of the state.

(4) **Program Objective.** The Job Tax Credit Program is designed to encourage businesses to locate and expand in the state.

(5) **Program Description.** The Job Tax Credit Program provides tax credits under Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated for certain business enterprises that create and retain jobs in areas designated as less developed. A minimum number of new full-time jobs must be created and retained for one year before any credit may be received.

(6) **Definitions.**

(a) **Less Developed Areas** -- means all 159 counties in this state and certain census tract areas that meet applicable requirements in law and regulation. Less developed census tract areas means areas in this state which are comprised of 10 or more contiguous census tracts, each of whom is equal to or worse than the benchmark county on the following economic indicators: highest unemployment rate; lowest per capita income; and highest percentage of residents whose income is below the poverty level. Comparisons between census tracts and the benchmark

county will be based on data from the Department of Labor and the United States Department of Commerce.

(b) Business Enterprise -- means any corporation, partnership, limited liability company, or sole proprietorship, or the headquarters of any such corporation, partnership, limited liability company, or sole proprietorship which is engaged in manufacturing, warehousing and distribution, processing, telecommunications, broadcasting, research and development, or tourism in a less developed area. Such term does not include retail businesses. The definition of Business Enterprise under the county tier program in Code Section 48-7-40 shall also include any business which is engaged in services for the elderly and persons with disabilities. For the purpose of determining which businesses are engaged in the qualifying activities, classifications will be made for individual establishments defined pursuant to 110-9-1-.01(6)(d) using the North American Industry Classification System (NAICS Code), United States, 2007. If the NAICS Code cannot be clearly defined, the business may request a determination as outlined under 110-9-1-.03(11).

1. Manufacturing means those establishments classified by the NAICS Code that belong to Sectors 31-33.

2. Warehousing and distribution means a warehouse, facility, structure, or enclosed area which is used primarily for the storage, shipment, preparation for shipment, or any combination of such activities, of goods, wares, merchandise, raw materials, or other tangible personal property, and those establishments classified by the NAICS Codes that belong to Subsectors 423, 424 and 493.

3. Processing includes, without limitation, (a) manufacturing establishments classified in NAICS Sectors 31-33; and (b) those establishments primarily engaged in providing data processing services, and further means only the following establishments in addition to Sectors 31-33 of the NAICS Code: establishments that are both primarily engaged in providing third party administration services of insurance and pension funds, and included in NAICS Code 524292; establishments that are both primarily engaged in providing automated clearinghouses, check clearinghouse associations, and included in NAICS Code 522320; establishments that are both primarily engaged in providing computer systems design and related services, and included in NAICS Industry Group 5415; establishments that are both primarily engaged in producing and distributing computer software, and included in NAICS Code 511210; establishments that are both primarily engaged in providing data processing services, and included in NAICS Code 518210; establishments that are both primarily engaged in providing payroll services, and included in NAICS Code 541214; establishments that are both primarily engaged in providing financial transaction or credit card processing services, and included in NAICS Code 522320, and establishments that are both primarily engaged in providing telephone call center services, and included in NAICS Industry 56142.

4. Telecommunications means those establishments that are primarily engaged in operating, maintaining and/or providing access to facilities for the transmission of voice, data, text, sound and video and classified within NAICS Codes 517110, 517210, 517911 and 517919.

5. Broadcasting means the transmission or licensing of audio, video, text, or other programming content to the general public, subscribers, or to third parties via radio, television, cable, satellite, or the Internet or Internet Protocol and includes motion picture and sound recording, editing, production, postproduction, and distribution, and is limited to those establishments that are primarily engaged in broadcasting and included in NAICS Subsector 515; establishments that are primarily engaged in Internet publishing and broadcasting and included in NAICS Subsector 519; establishments that are primarily engaged in telecommunications and included in NAICS Subsector 517; and establishments that are primarily engaged in motion picture and sound recording industries and included in NAICS Subsector 512.

6. Research and development means only the following establishments: establishments primarily engaged in conducting research and experimental development in the physical, engineering and life sciences and classified in NAICS Industries 54171; and establishments primarily engaged in conducting research and analyses in cognitive development, sociology, psychology, language, behavior, economic, and other social science and humanities research and classified in NAICS Code 541720.

7. Tourism means only the following establishments: establishments that are both primarily engaged in providing lodging for the public, and included in NAICS Industry Group 7211, provided that establishments offering lodging for more than 30 consecutive days to the same customer shall not qualify for a tax credit under this provision; establishments that are both primarily engaged in providing overnight or short term sites for recreational vehicles, trailers, campers or tents, and included in NAICS Code 721211, provided that establishments primarily engaged in the operation of residential trailer parks or primarily engaged in providing accommodations for more than 30 consecutive days to the same customer shall not qualify for a tax credit under this provision; establishments that are both primarily engaged in the operation of convention centers, and included in NAICS Code 711310; establishments that are both primarily engaged in the operation of sports stadiums or arenas, and included in NAICS Code 711310; establishments that are both primarily engaged in the operation of recreational camps, and included in NAICS Code 721214, provided that establishments primarily engaged in the operation of summer camps shall not qualify for a tax credit under this provision; establishments that are both primarily engaged in the operation of golf courses open to the general public on a contract or fee basis, which are associated with a resort development, and included in NAICS Code 713910, provided that establishments primarily engaged in the operation of golf courses associated with housing developments shall not qualify for a tax credit under this provision; establishments that are both primarily engaged in the operation of sports complexes open to the general public on a contract or fee basis, and included in NAICS Code 711310; establishments that are both primarily engaged in the operation of professional or semi-professional sport clubs, and included in NAICS Code 711211, provided that for the purposes of this provision professional and semi-professional sport clubs include only those clubs which compensate athletes for their services as players and such term does not include amateur sport clubs, amateur sport leagues, or amateur sport associations; establishments that are both primarily engaged in the operation of racing facilities, including drag-strips, motorcycle race tracks, auto or stock car race tracks or speedways, and included in NAICS Code 711212; establishments that are both

primarily engaged in the operation of amusement centers, amusement parks, theme parks, or amusement piers, and included in NAICS Code 713110; establishments that are both primarily engaged in the operation of tours within the State of Georgia, and included in NAICS Code 561520; establishments that are both primarily engaged in the operation of airplanes, helicopters, buses, trolleys, vans, scenic railroads, aerial tramways, or boats for excursion or sightseeing purposes within the State of Georgia, and included in NAICS Subsector 487; establishments that are both primarily engaged in the operation of hunting preserves, trapping preserves, or fishing preserves or lakes which are open to the general public on a contract or fee basis, and included in NAICS Code 114210; and establishments that are both primarily engaged in the operation of museums, planetariums, art galleries, botanical gardens, aquariums, or zoological gardens, and included in NAICS Subsector 712, provided that establishments which derive 50% or more of their gross revenue from the sale of goods or merchandise shall not qualify for a tax credit under this provision.

8. Services for the elderly and persons with disabilities means establishments primarily engaged in providing nonresidential social assistance services to improve the quality of life for the elderly, persons diagnosed with mental retardation, or persons with disabilities and included in NAICS Code 624120. The inclusion of this industry under the Business Enterprise definition is only applicable to establishments which qualify for the job tax credit under the county tier program under Code section 48-7-40 and is not applicable to establishments which qualify for the census tract program under Code section 48-7-40.1.

(c) Retail Business -- means any establishment that is primarily engaged in retailing merchandise and rendering services incidental to the sale of merchandise and included in NAICS Sector 44-45; any establishment that is primarily engaged in providing professional services and included in NAICS Industry Groups 5411, 5412 and 5413; and establishments that are primarily engaged in banking, savings and lending functions and included in NAICS Subsector 523, NAICS Industry Groups 5211, 5221, and 5222, and NAICS Industries 52231 and 52239.

(d) Establishment -- means an economic unit at a single physical location where business is conducted or where services or industrial operations are performed. Note that if more than one business activity is conducted at the establishment then only those jobs engaged in a qualifying activity will be eligible. For example, a retail establishment which also has a distribution activity serving the southeast will only be eligible for the jobs engaged in the qualifying distribution activity and not for any retail jobs.

(e) Benchmark County -- means the county according to the most recent data from the Department of Labor and the United States Department of Commerce that ranks seventy-first from the bottom county on the following factors: highest unemployment rate; lowest per capita income; and highest percentage of residents whose income is below the poverty level. This county's scores will be the benchmark for determining census tracts that are potentially eligible for inclusion in less developed census tract areas. When counties are ranked each year by the commissioner of community affairs to determine tier status, one county will be ranked as the seventy-first less developed county. This county will not necessarily be used as a benchmark for

determining those census tracts eligible for inclusion in less developed census tract areas as calculation of the benchmark county will use the same data set available to rank the census tracts.

(f) Competitive project – means the expansion or location of some or all of a business enterprise’s operations in this state having significant regional impact where the commissioner of economic development certifies that but for some or all of the tax incentives provided under Code section 48-7-40, the business enterprise would have located or expanded outside this state. Businesses claiming the tax credit under this provision must provide certification from the commissioner of economic development when claiming such credit on the Georgia Corporation Income Tax return.

(g) Full-Time Job -- means a job with no predetermined end date, with a regular work week of 35 hours or more for the entire normal year of local company operations, and with benefits provided to other regular employees of the local company, but does not mean a job classified for federal tax purposes as an independent contractor. Leased employees will, for the purposes of the Job Tax Credit Program, be considered employees of the company using the services of the leased employees. Leased employees and other employees must be counted toward new job totals for purposes of determining a business enterprise's job tax credit when such employees otherwise meet the definition of full-time job contained herein. Leased employees and other employees that do not meet the definition of full-time job contained herein may not be counted toward job totals. (Note that only the business enterprise using the services of leased employees may claim credit for such employees so long as the business enterprise retains control of the business location and does not delegate such control to the leasing company.)

(h) Headquarters -- means the central world or national administrative offices of a business enterprise that is primarily engaged in performing management and general administrative functions for such business enterprise. If a business has headquarters that provides services to business enterprises, such business must derive at least 51 percent of its sales from the operations of its business enterprises in order for such business's headquarters to be potentially eligible for tax credits under these regulations.

(i) Maintained Job -- means any new job continued for all or part of the consecutive four-year period after its creation.

(j) Military Zone – means an area designated by the commissioner of community affairs under the provision of O.C.G.A. 48-7-40.1(c)(2). Although the areas eligible for designation are posted on DCA’s website, the applicable local government must request a formal designation before the area is actually designated as a Military Zone. Businesses locating within a designated Military Zone must meet all eligibility requirements for the tax credit prior to filing for the credit on the tax return.

(k) New Job -- means any full-time job created by an employer in Georgia at the time a new establishment or an expansion of an existing establishment is initially staffed, but does not include any transferred job or replacement job. Part-time jobs that become full-time positions

shall be considered new full-time jobs for the purposes of the Job Tax Credit Program. Part-time jobs may not be added together to establish full-time job equivalents for the purposes of the Job Tax Credit Program. When a business purchases or leases existing assets (whether through lease, asset sale, stock sale, or other transaction) located at the site where new jobs are going to be claimed for the purposes of the Job Tax Credit Program, the assets must have been out of service for six months or longer unless otherwise approved by the commissioner of community affairs. Exceptions to this rule include the following situations:

1. When a business purchases or leases existing assets and uses those assets for a substantially different process than their immediate prior use, the rule does not apply and no approval is required from the commissioner of community affairs;

2. When a seasonal business purchases or leases existing assets, the assets must have been out of service for one year or longer unless otherwise approved by the commissioner of community affairs; and

3. Any time a business is uncertain whether or not new jobs have been created based on this paragraph, the business must seek a ruling from the commissioner of community affairs before claiming any credits.

4. Requests for exceptions to the six-month rule must be filed with the commissioner of community affairs no later than six months following the purchase of the business / facility or such exception will not be considered.

(i) When the loss of the business operation would have a detrimental effect on the community, the purchasing business enterprise which seeks the exception must provide documentation to support such effect and seek approval from the commissioner of community affairs. Documentation of loss of the business operation must be supported by a letter from the selling business enterprise validating the impending closure and, if the closure would be subject to the Workers Adjustment and Retraining Notification (WARN) Act, then a copy of the notification made to the Department of Labor under the WARN Act must also be provided. Local press releases documenting the loss of jobs and effect on the community should be provided to further substantiate the request.

(l) Opportunity Zone – means an area designated by the commissioner of community affairs under the provision of O.C.G.A. 48-7-40.1(c)(4) and Rules Chapter 110-24-1. Businesses locating within a designated Opportunity Zone must meet all eligibility requirements for the tax credit and have an Opportunity Zone Certification form completed by the local Opportunity Zone coordinator and acknowledged by DCA prior to filing the tax credit on the corporation income tax return. The completed Certification form must be filed with the tax return when claiming the credit.

(m) Prior Year/Base Year -- means the tax year immediately prior to Year One.

(n) Replacement Job -- means a job created by an employer in Georgia that takes the place of a job that was interrupted due to a manmade or natural disaster. Neither the length of the interruption nor the location of the replacement job will favorably affect eligibility for the Job Tax Credit Program.

(o) To Generate/Trigger Credits -- means to meet all requirements in law and regulation for the tax credits allowed under Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated except for maintenance of jobs in all or part of the subsequent four years after their creation. Credits are not affected by a county's or census tract area's status once credits have been generated.

(p) Transferred Job -- means a job that is relocated by a business or related businesses from one Georgia establishment to another, or a job that is created by a business or related business that is substantially the same as a previously existing job of such business or related business at a location in Georgia that has ceased operations for six months or less. Because the Job Tax Credit is calculated by taxpayer, by county, jobs that are relocated from one establishment to another within the same county by the same taxpayer are not considered transferred jobs. If the duties of a transferred job are substantially different from those at the former location, the business may request in writing that the commissioner of community affairs determine whether or not the job is a new job for the purposes of the Job Tax Credit Program. Only after the commissioner of community affairs has determined that the job is a new job may any credits be earned. Similarly, new jobs that are transferred during years one through five from their original location to another county or less developed census tract area may not earn credits after their transfer unless otherwise approved by the commissioner of community affairs.

(q) Year One -- means the tax year in which sufficient new jobs are created that, meeting the requirements of these regulations, entitle a business enterprise to tax credits in years one through five after the creation of the new jobs.

(r) Years One Through Five -- means the consecutive five-year period in which job tax credits may be allowed for the new jobs created in year one as well the subsequent four years in which additional new jobs may be created that may also qualify for job tax credits.

(s) Auxiliary Establishment -- means an establishment primarily engaged in performing management or support services for other establishments of the same business. Auxiliary establishments will be included in the definition of business enterprise only when they are primarily engaged in providing the products or services provided by otherwise eligible business enterprises.

(t) Leased Employee -- means an employee of an employee leasing company, as defined by the Official Code of Georgia Annotated Section 34-8-32 paragraph (a).

(u) Wages -- means total dollars paid (including bonuses, incentive pay, deductions from gross pay, etc.) to all employees (both hourly and salaried) during the year. Wages does not mean contributions made by employers on behalf of employees to health insurance, retirement, or

other benefit programs. This definition is consistent with and patterned after the definition of average weekly wages contained in the most recent annual *Georgia Employment and Wages Averages Report*.

(Authority O.C.G.A. 48-7-40, O.C.G.A. 48-7-40.1, and O.C.G.A. 36-62-5.1)

**110-9-1-.02 Designation of Tier Status of
Georgia Counties/Designation
of Less Developed Census Tract
Areas. Amended.**

(1) Timetable and Effective Dates for Designation of Tier Status of Georgia Counties/Designation of Less Developed Census Tract Areas. Not later than December 31 of each year, using the most current data available from the Department of Labor and the United States Department of Commerce, the commissioner of community affairs shall rank and designate all 159 counties in Georgia as less developed areas. And no later than December 31 of each year, using the most current data available from the Department of Labor and the United States Department of Commerce, the commissioner of community affairs shall rank and designate certain less developed census tract areas.

(a) For the purpose of determining the number of new jobs created, business enterprises shall use their first tax year that begins on or after January 1 of the calendar year in which a census tract is designated as less developed or in which a county is designated as a tier 1, tier 2, tier 3, or tier 4 county, unless otherwise approved by the commissioner of community affairs.

(2) Ranking and Designation of Tier Status of Georgia Counties. A combination of the following factors will be used in ranking counties: highest unemployment rate for the most recent 36 month period; lowest per capita income for the most recent 36 month period; and highest percentage of residents whose incomes are below the poverty level according to the most recent data available.

(a) Counties ranked and designated as the first through seventy-first least developed counties shall be classified as tier 1, counties ranked and designated as the seventy-second through one hundred sixth least developed counties shall be classified as tier 2, counties ranked and designated as the one hundred seventh through one hundred forty-first least developed counties shall be classified as tier 3, and counties ranked and designated as the one hundred forty-second through one hundred fifty-ninth least developed counties shall be classified as tier 4.

(b) The factors used in ranking counties will all be given equal weight.

(c) In the case of a tie that would place tied counties in two different categories (tier 1, tier 2, tier 3, or tier 4), the tie will be broken in the following manner: the county with the highest average unemployment rate will be in the lower category (e.g., tier 1 if the split is between tier 1 and tier 2). If the counties are tied on highest average unemployment rate, the county with the lowest average per capita income will be in the lower category. If the counties

are tied on both highest average unemployment rate and lowest average per capita income, the county with highest percentage of poverty will be in the lower category. If the counties are tied on all three categories, the board of community affairs shall determine which county falls into each category.

(3) **Ranking and Designation of Ten or More Contiguous Census Tracts as Less Developed Areas.** Using data from the Department of Labor and the United States Department of Commerce, a combination of the following factors will be used in ranking counties in order to help determine the less developed census tract areas: highest unemployment; lowest per capita income; and highest percentage of residents whose income is below the poverty level. The county that ranks seventy-first from the bottom on these factors will be the benchmark county used to determine which census tracts are potentially eligible for inclusion in a less developed census tract area.

(a) All census tracts in the state and the benchmark county will be ranked using the following factors: highest unemployment; lowest per capita income; and highest percentage of residents whose income is below the poverty level. Data used to rank the tracts and the benchmark county will be from the Department of Labor and the United States Department of Commerce. All census tracts that are equal or lower in rank than the benchmark county will be eligible for inclusion in a less developed census tract area if they can be grouped as part of 10 or more contiguous census tracts that are also eligible for inclusion in a less developed census tract area.

(b) Groupings of 10 or more eligible census tracts will be determined according to the following rules:

1. all eligible census tracts will be grouped into less developed census tract areas that are as large as possible but never in groupings of less than 10;
2. groupings may cross county boundaries; and
3. all census tracts in a grouping must be contiguous.

(c) All factors used in ranking census tracts and counties for the purpose of determining less developed census tract areas will be given equal weight.

(4) **Redesignation of Tier Status of Georgia Counties/Designation of Less Developed Census Tract Areas Based on a Period of Economic Distress.** Any tier 3 county which undergoes a sudden and severe period of economic distress caused by the closing of one or more business enterprises located in such county may be eligible for tier 2 designation. Also, any tier 2 county which undergoes a sudden and severe period of economic distress caused by the closing of one or more business enterprises located in such county may be eligible for tier 1 designation. In addition, any area comprised of ten or more contiguous census tracts which undergoes a sudden and severe period of economic distress caused by the closing of one or more business enterprises located in such area may be eligible for designation as a less developed

census tract area; or any area comprised of one or more contiguous census tracts which, in the opinion of the commissioner of community affairs, is or will be adversely impacted by the loss of one or more jobs, businesses, or residences as a result of an airport expansion, including noise buy-outs, or the closing of a business enterprise located within such area which, in the opinion of the commissioner of community affairs, results or will result in a sudden and severe period of economic distress.

(a) In order to receive consideration for designation as a tier 2 or tier 1 county based on a sudden and severe period of economic distress caused by the closing of one or more business enterprises, a county must request designation from the commissioner of community affairs and must show actual job losses that exceed the following threshold criteria:

1. If the unemployment rate of the county has exceeded the state's average unemployment rate for the previous 3 months, the dislocation must amount to at least 2 percent of the county's labor force.

2. If the unemployment rate of the county was equal to or less than the state's average unemployment rate for any of the previous 3 months, the dislocation must amount to at least 4 percent of the county's labor force.

3. Documentation of the closing of the business enterprise must generally be provided in the form of a letter from such business enterprise validating the closure, documentation of the closure on the Department of Labor web site (for business enterprises subject to the WARN Act), and local press releases announcing such closure and the effect of such closure on the community. For purposes of this provision, a closure will be defined based on the WARN ACT; Public Law 100-379 Section 2(a)(2) as the permanent shutdown of a single business establishment, or one or more facilities or operating units within such establishment, if the shutdown results in an employment loss at the establishment during any 30-day period for 50 or more employees excluding any part-time employees.

(b) Counties/census tract areas designated as tier 2 or tier 1 counties or as less developed census tract areas under the provisions of this paragraph will remain designated for one year. After one year, such counties/census tract areas may ask the commissioner of community affairs to be redesignated for additional years if documentation is provided that demonstrates a continuing period of economic distress.

(c) No designation pursuant to this paragraph shall displace or remove any other county/census tract area designated as a tier 2 or tier 1 county or as a less developed census tract area pursuant to paragraphs (2) or (3) of rule 110-9-1-.02.

(d) In order to receive consideration for designation as a less developed census tract area based on the closing of one or more business enterprises, an area must request designation from the commissioner of community affairs and must provide documentation sufficient to support that major job losses have occurred or will occur within such area. Any portion of such one or more contiguous census tracts may be currently designated as part of an existing less

developed census tract area. In addition, such one or more contiguous census tracts must meet the criteria in paragraph (3)(b)2 and (3)(b)3 of rule 110-9-1-.02. Notwithstanding any provision of this subparagraph to the contrary, any area comprised of one or more contiguous census tracts which is or will be adversely impacted by the loss of one or more jobs, businesses, or residences as a result of an airport expansion, including noise buy-outs, may be designated as a less developed census tract area. In order to be considered for designation as a less developed census tract the area requesting designation must show actual job losses that exceed the following threshold criteria:

1. If the unemployment rate of the area requesting designation has exceeded the state's average unemployment rate for the previous 3 months, the dislocation must amount to at least 2 percent of the area's labor force.

2. If the unemployment rate of the area requesting designation was equal to or less than the state's average unemployment rate for any of the previous 3 months, the dislocation must amount to at least 4 percent of the area's labor force.

3. Documentation of the closing of the business enterprise must be provided in the form of a letter from such business enterprise validating the closure, documentation of the closure on the Department of Labor web site (for business enterprises subject to the WARN Act), and local press releases announcing such closure and the effect of such closure on the community. For purposes of this provision, a closure will be defined based on the WARN ACT; Public Law 100-379 Section 2(a)(2) as the permanent shutdown of a single business establishment, or one or more facilities or operating units within such establishment, if the shutdown results in an employment loss at the establishment during any 30-day period for 50 or more employees excluding any part-time employees.

(e) At any time a request for designation based on a sudden and severe period of economic distress is sought that meets the criteria established in law and regulation, the commissioner will bring his recommendation to the board of community affairs for final determination.

(5) Procedures to Ensure Business Enterprises Can Claim Credits in Future Years. For business enterprises which plan a significant expansion in their labor forces, the following procedures ensure that they can claim credits in future years without regard to whether or not a particular county/census tract area is reclassified in a different tier or removed from the list of less developed areas: Business enterprises which plan a significant expansion in their labor forces in a currently designated tier 1, tier 2, or tier 3 county/less developed census tract area may file a notice of intent with the commissioner of community affairs stating the county/census tract area in which the business enterprise is planning to locate or expand, the number of new jobs planned, and the dates for the planned expansion. The notice of intent may only be filed for locations or expansions that are planned within three years of the date of the notice of intent, except when evidence satisfactory to the commissioner of community affairs is submitted that demonstrates a high probability that significant job creation will result within the time-frame submitted in the notice of intent. The notice of intent, once received and accepted by the

commissioner of community affairs, will allow the business enterprise job tax credits based on the tier status of the county or the status of the census tract at the time of acceptance of the notice of intent if the planned location or expansion takes place within the time-frame submitted in the notice of intent and if all other program requirements are satisfied as specified in these regulations and in the Official Code of Georgia Annotated Section 48-7-40, 48-7-40.1, and 36-62-5.1. No credits for new jobs may be generated outside the time-frame of a notice of intent unless otherwise provided for in rule 110-9-1-.03. Credits for maintained jobs may still be taken even after a notice of intent has lapsed. If the tier status of a county changes from tier 2 to tier 1 or from tier 3 to tier 2 during the time-frame of a notice of intent, a business enterprise may elect to take tax credits based on the lower tier for new jobs created during the years the county is in the lower tier.

(a) Notices of intent may be updated or amended by any business enterprise not more often than once a year

(b) For less developed census tract areas, notices of intent or amendments and updates thereto may only be submitted to the commissioner of community affairs during calendar years in which the areas are designated as less developed. When a business enterprise submits a notice of intent to the commissioner of community affairs, the applicable census tract or tier status for claiming credits for future years will be the census tract or tier status of the area during the calendar year prior to the calendar year of the annual year-end notice of intent deadline.

(c) Business enterprises planning the creation of new jobs in tier 4 counties may file notices of intent, but no benefit is derived from such filing unless otherwise stated in law or regulation.

(d) Businesses planning the creation of new jobs in the first through the fortieth least developed counties may also file notices of intent with the commissioner of community affairs. The notices of intent, once received and accepted by the commissioner of community affairs, will allow businesses job tax credits as described in 110-9-1-.02(5), even if such businesses are not business enterprises as defined in these regulations. The three-year limitation on notices of intent also applies to businesses planning jobs in the first through the fortieth least developed counties. Credits for maintained jobs may still be taken even after a notice of intent has lapsed.

(e) The notice of intent procedures described in these regulations are intended to protect companies, for the limited period of three years, from the results of the re-ranking of counties and census tracts. These procedures, however, do not protect companies from changes in law unless otherwise specified in law. Protection provided by notices of intent include the following potential changes in benefits resulting from re-ranking: changes in credit amount, changes in job threshold, changes in limitations in the amount of tax liability that may be offset, and changes in ability to apply credits against payroll withholding.

(f) The commissioner of community affairs will accept notices of intent during the period between February 16th of each year and February 15th of the following year. The deadline for acceptance is February 15th of each year. Notices of intent will apply to the three

years beginning with the year of the year-end deadline for which the notices are filed. For example, a Notice of intent filed for the 2009 county rank must be filed no later than February 15, 2010, and will apply to the 2010, 2011 and 2012 years.

(Authority O.C.G.A 48-7-40, O.C.G.A 48-7-40.1 and O.C.G.A. 36-62-5.1)

110-9-1-.03 Job Tax Credit. Amended.

(1) **Eligibility for Job Tax Credit for New Jobs Created in Year One.** Provided that all the provisions of these regulations are met, business enterprises in counties currently designated by the commissioner of community affairs as tier 1 counties or less developed census tract areas shall be allowed a job tax credit for taxes imposed under Article 2 of Chapter 7 of Title 48 equal to \$3,500.00 annually, business enterprises in counties currently designated by the commissioner of community affairs as tier 2 counties shall be allowed a job tax credit for taxes imposed under Article 2 of Chapter 7 of Title 48 equal to \$2,500.00 annually, business enterprises in counties designated by the commissioner of community affairs as tier 3 counties shall be allowed a job tax credit for taxes imposed under Article 2 of Chapter 7 of Title 48 equal to \$1,250 annually, and business enterprises in counties currently designated by the commissioner of community affairs as tier 4 counties shall be allowed a job tax credit for taxes imposed under Article 2 of Chapter 7 of Title 48 equal to \$750.00 annually. The credit amount allowed for each tier shall apply to each new job created for five (5) years beginning with years one through five upon the creation of the job.

(a) A business enterprise will receive job tax credits in year one for full-time jobs created in year one. Similarly, a business enterprise will receive job tax credits in year two for full-time jobs created in year one and maintained in year two. This method of calculating job tax credits also applies in years three through five. The number of jobs created and maintained during years one through five will be calculated in the same manner as described in 110-9-1-.03(1)(c), i.e., using a comparison of average monthly employment from taxable year to taxable year.

(b) Only those business enterprises that increase employment by five or more in a tier 1 county or in a less developed census tract area shall be eligible for the credit. Only those business enterprises that increase employment by 10 or more in a tier 2 county shall be eligible for the credit. Only those business enterprises that increase employment by 15 or more in a tier 3 county shall be eligible for the credit. Only those business enterprises that increase employment by 25 or more in a tier 4 county shall be eligible for the credit. Only those businesses that increase employment by two or more in a Military Zone or an Opportunity Zone shall be eligible for the credit. The credit shall not be allowed during a year if the net employment increase falls below the number required in such tier. Any credit received for years prior to the year in which the net employment increase falls below the number required in such tier shall not be affected.

(c) The number of new jobs increase shall be determined by comparing the monthly average number of full-time employees subject to Georgia income tax withholding for the

taxable year with the corresponding number of the prior taxable year. The monthly average number of full-time employees in a taxable year shall be determined by the following method:

1. for each month of the taxable year, count the total number of full-time employees of the business enterprise that are subject to Georgia income tax withholding as of the last payroll period of the month or as of the payroll period during each month used for the purpose of reports to the Georgia Department of Labor;

2. add the monthly totals of full-time employees; and

3. divide the result by the number of months the business enterprise was in operation during the taxable year. Note that only an initial start-up year may be calculated at less than twelve months – see 110-9-1-.03(6) for further clarification. Transferred jobs and replacement jobs may not be included in the monthly totals.

(d) For business enterprises that made the election authorized by O.C.G.A. 48-7-40.23 in 2001 to use a calendar year for reporting the job tax credit, or for those businesses which had a change in the taxable period after initially filing for the job tax credit, then those businesses will continue to utilize the same reporting period as previously used in claiming the job tax credit regardless of the actual period covered by the tax return. The calculation of the credit will be in the same manner described in 110-9-1-.03(1)(c) above, but will use the applicable twelve-month period for the job tax credit calculation in lieu of the taxable year. See 110-9-1-.03(6) for further clarification on the twelve-month period.

(e) Job tax credits for jobs created in year one and maintained during a portion of or all of the following four years will not be affected even if the county/census tract area, during years two through five, is no longer designated as less developed or is reclassified.

(2) Eligibility for Job Tax Credit for Additional New Jobs (Jobs Created During Years Two Through Five). Tax credits for the taxes imposed under Article 2 of Chapter 7 of Title 48 shall be awarded for additional new jobs created by business enterprises qualified under subsection (b) or (c) of Code Sections 48-7-40 and 48-7-40.1 for the four years immediately following an eligible Year One. Additional credits are allowed for additional new jobs if the business enterprise already qualifies for the job tax credit based on new job increases in year one and if the county/census tract area retains the year one status in the current year. Additional credits are also allowed for additional new jobs if the business enterprise already qualifies for the job tax credit based on new job increases in year one and the additional new jobs are created within the time-frame of a current and accepted notice of intent. Additional new jobs shall mean those new jobs created in year two that increase an employer's monthly average of full-time employees above the number of monthly average of full-time employees in year one; and those new jobs created in year three that increase an employer's monthly average of full-time employees above the highest number of monthly average of full-time employees achieved by a business enterprise in previous years beginning with year one, etc. Additional new jobs may only be created in years two through five, including all subsequent years two through five initiated by a qualifying increase of new jobs.

(a) The number of additional new jobs shall be determined by comparing the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year, with the corresponding number of the prior taxable year. The monthly average number of full-time employees in a taxable year shall be determined by the following method:

1. for each month of the taxable year, count the total number of full-time employees of the business enterprise that are subject to Georgia income tax withholding as of the last payroll period of the month or as of the payroll period during each month used for the purpose of reports to the Georgia Department of Labor;

2. add the monthly totals of full-time employees; and

3. divide the result by the number of months the business enterprise was in operation during the taxable year. Note that only an initial start-up year may be calculated at less than twelve months – see 110-9-1-.03(6) for further clarification. Transferred jobs and replacement jobs may not be included in the monthly totals.

(b) A business enterprise will receive job tax credits in year two for additional new jobs created in year two. Similarly, a business enterprise will receive job tax credits in year three for additional new jobs created in year two and maintained in year three. This method of calculating job tax credits also applies to the remaining three years that an enterprise may receive tax credits for additional jobs created in year two. This same process applies to additional new jobs created in years three through five. The number of additional jobs maintained during years two through five after their creation will be calculated in the same manner as described in 110-9-1-.03(2)(a), i.e., using a comparison of average monthly employment from taxable year to taxable year.

(c) Job tax credits for additional jobs created in years two through five and maintained during a portion of or all of the following four years will not be affected even if the county/census tract area, at some point during years two through five, is reclassified to another tier or is no longer designated as less developed.

(d) Additional job tax credit amounts shall be based on the current tier or census tract status of the area or on the current accepted notice of intent. In addition, job tax credits for additional jobs shall only be allowed if the business enterprise has met, in Year One, the net employment increase required by the current status of the area. If, however, a company has filed a notice of intent that has been accepted by the commissioner of community affairs and if additional jobs are created within the time-frame of the notice of intent, credits for additional jobs will be allowed if the business enterprise has met, in Year One, the net employment increase required by the status of the area as temporarily preserved by the notice of intent filed with the Georgia Department of Community Affairs.

(3) Additional Job Tax Credit Program Requirements for All New and Additional Jobs Starting with Taxable Years Beginning on or After January 1, 2001. These provisions apply to tier 1, tier 2, tier 3, and tier 4 counties as well as to less developed census tract areas.

(a) To qualify for any job tax credits, business enterprises must make health insurance coverage available to all employees filling the new or additional new full-time jobs; provided, however, that nothing in these regulations shall be construed to require business enterprises to pay for all or any part of health insurance coverage for such employees in order to claim job tax credits if such business enterprises do not pay for all or any part of health insurance coverage for other employees.

1. This provision requires that health insurance is made available to all new or additional employees in order for business enterprises to qualify for job tax credits. Business enterprises do not have to pay for such insurance unless they are paying for all or part of the cost of such insurance for existing employees. That is, new and additional employees must receive the same health insurance benefit as existing employees, and, at a minimum, must have health insurance coverage made available to them.

2. In order for a business enterprise to demonstrate compliance with this provision, an officer of the company must execute the appropriate certification as prescribed by DCA. Upon audit, business enterprises must document the availability of health insurance coverage with insurance plan documents and other relevant information.

(b) For tier 1, 2, 3, and 4 counties and for less developed census tract areas, the average wage of the new jobs created must be above the average wage of the county that has the lowest average wage of any county in the state as reported in the most recently available annual issue of the *Georgia Employment and Wages Averages Report* of the Department of Labor.

1. The average wage of the county means the average wage as reported in the most recently available annual issue of the *Georgia Employment and Wages Averages Report* of the Georgia Department of Labor, which is the issue that is available as of the last day of the tax year in which the jobs are created.

2. Determination of the average wage of the new and additional jobs is as follows: In order for business enterprises to demonstrate compliance with this provision, an officer of the company must execute the appropriate certification as prescribed by DCA. Upon audit, business enterprises must document that average wage standards as described herein have been met.

(4) Initiation of Subsequent Periods of Eligibility for Job Tax Credits Based on Required Net Employment Increases for Counties and Less Developed Census Tract Areas. A subsequent year one and years two through five are created when a business enterprise creates the required threshold number of new jobs or more above its previous high employment (based on monthly average of full-time employees for each year) beginning with employment during the business enterprise's first year of eligibility for the job tax credit (initial year one).

(a) Subsequent periods of eligibility are subject to all the provisions of these regulations and Official Code of Georgia Annotated Sections 48-7-40, 48-7-40.1, and 36-62-5.1.

(b) Job tax credits generated under previous periods of eligibility will not be affected as long as the new jobs are maintained. But no new job tax credits may be generated under previous periods of eligibility after a subsequent period of eligibility has begun.

(c) If a business enterprise creates the required number of new jobs to establish a subsequent period of eligibility but does not meet other requirements in law or regulation pertaining to health insurance and above average wages, no subsequent period of eligibility is established. In addition, such new jobs may not be counted as additional jobs under a previous period of eligibility.

(5) Computation of Job Tax Credit for Business Enterprises Based On Employment and Average Wages By County/Census Tract Area. For all business enterprises, the computations for employment increases and average wages for the job tax credit will be based on total qualified employment and wages calculated separately for each taxpayer in each individual county/census tract area.

(a) When a single physical location includes both business enterprise activities and other activities, only employment directly associated with the business enterprise may be counted toward the number of new full-time jobs needed to generate credits, unless the single physical location is primarily engaged in eligible activities as defined by these regulations.

(6) Computation of Job Tax Credit for Business Enterprises Based On 12 Month Periods Only. Business enterprises must compute increases and decreases in full-time jobs on the basis of 12-month periods only, even when business enterprises have taxable years that are not equal to 12 months. The exception to this rule is a business enterprise which begins operations in mid-year. Initial eligibility for a start-up operation may be based on less than twelve months. All subsequent job tax credit calculations must be made on twelve-month periods regardless of short-period returns or changes in tax periods. This may cause the job tax credit calculation period to be different from the tax year of the business enterprise.

(7) Carryforward of Job Tax Credit and Limitation on Amount of Tax Credit In Any One Taxable Year. Any credit claimed under Code Sections 48-7-40, 48-7-40.1, or 36-62-5.1 but not used in any taxable year may be carried forward for ten years from the close of the taxable year in which the qualified jobs were established. In tiers 3 and 4, the credit established by Code Sections 48-7-40, 48-7-40.1, and 36-62-5.1 taken in any one taxable year shall be limited to an amount not greater than 50 percent of the taxpayer's state income tax liability which is attributable to income derived from operations in this state for that taxable year. In tiers 1 and 2 and in less developed census tract areas, the credit allowed under Code Sections 48-7-40, 48-7-40.1, and 36-62-5.1 against taxes imposed under this article in any taxable year shall be limited to an amount not greater than 100 percent of the taxpayer's state income tax liability attributable to income derived from operations in this state for such taxable year, unless otherwise provided by law and regulation.

(8) **Use of Job Tax Credits Against Income Tax Withholding.** This provision allows for business enterprises which have excess income tax credit to claim such excess credit against withholding taxes if the business enterprise is located within a tier 1 county or a less developed census tract, or for projects certified by the commissioner of economic development.

(a) Business enterprises in tier 1 counties and in less developed census tract areas shall be allowed job tax credits as provided in law and regulation. Any lawful business located within areas specified under Code sections 48-7-40(i), 48-7-40.1(c)(2) and 48-7-40.1(c)(4) shall also be allowed job tax credits as provided in law and regulation. When the amount of such credits exceed income tax liability, the excess may be taken as a credit against quarterly or monthly payments under Code Section 48-7-103 but not to exceed in any one taxable year \$3,500 for each new full-time employee job when aggregated with the credit applied against income tax liability.

(b) Business enterprises that have a location or expansion project in this state which has been certified as a competitive project by the commissioner of economic development under Code section 48-7-40(a)(3) shall be allowed job tax credits as allowed by law and regulation. When the amount of such credit exceeds income tax liability credit limitations, the excess may be taken as a credit against quarterly or monthly payments under Code Section 48-7-103 but not to exceed in any one taxable year \$2,500 for each new full-time job in a Tier 2 county, \$1,250 for each new full-time job in a Tier 3 county, and \$750 for each new full-time job in a Tier 4 county.

(c) Note that DCA will not further regulate or administer this provision. Specific regulations and procedures will be developed by the Georgia Department of Revenue.

(9) **The Sale, Merger, Acquisition, Reorganization, or Bankruptcy of any Business Enterprise Shall Not Create New Eligibility in any Succeeding Business Entity.** The sale, merger, acquisition, reorganization, or bankruptcy of any business enterprise shall not create new eligibility in any succeeding business entity. Any unused job tax credit may be transferred by a business enterprise to any transferee of that business enterprise. New tax credits may be earned by any transferee of a business enterprise for new, full-time jobs created by the original business enterprise as long as those new, full-time jobs are maintained by the transferee of the business enterprise and as long as the transferee meets other applicable requirements in law and regulation.

(a) When one business purchases another business enterprise and the requirements of paragraph 6(k), rule 110-9-1-.01, requiring assets to be idle for six months or longer have not been met, the succeeding enterprise may be eligible for tax credits for new jobs above the employment levels of the preceding business enterprise. The succeeding business enterprise must submit information to the commissioner of community affairs sufficient to establish a base level of employment before any credit may be allowed. Submission of this information will require that the preceding business enterprise be willing to supply the succeeding business enterprise or the commissioner of community affairs payroll or other information confirming the employment base of the preceding company.

(b) The sale or acquisition of a business enterprise need not entail the actual sale of the entity, but may also include the lease, asset sale, stock sale, or other transaction in which the operation of the business enterprise is essentially continued by a new entity. Such transactions will be deemed a continuation of the business enterprise unless otherwise approved by the commissioner of community affairs under 110-9-1-.01(6)(k).

(10) **Time Limit for Claiming Tax Credits.** Any tax credit claimed under Code sections 48-7-40 and 48-7-40.1 must be claimed within one year of the earlier of the date the original tax return was filed or the date such return was due, including extensions.

(11) **Request for Determination.** In the event that a business believes it should qualify for the Job Tax Credit program, but does not clearly meet the eligibility requirements outlined in the Code and regulation, a Request for Determination may be requested from the Department of Community Affairs. The business should provide a detailed explanation of the activity being conducted at the business location for which the Job Tax Credits are being requested, along with any documentation to support the request. Once all information necessary to make a determination has been received, the Department shall have 30 days to complete the review and issue a determination regarding the eligibility of the business for the job tax credit program.

(12) **Report Issued Annually by the State Revenue Commissioner.** Each year, the state revenue commissioner will issue a report on the job tax credit program. Included in the report will be information, by county/census tract area, by year, on the number of jobs created through the job tax credit and the amount of the tax credit used by all business enterprises.

(13) **Authority of the Commissioner of Community Affairs.** The commissioner of community affairs shall determine which businesses are engaged in qualifying activities and whether or not qualifying net increases or decreases have occurred and may require reports, promulgate regulations, and hold hearings as needed for substantiation and qualification.

(14) **Special Provisions.**

(a) In counties recognized and designated as the first through fortieth least developed counties in the tier 1 designation, job tax credits shall be allowed as provided in these regulations, in addition to business enterprises, to any business of any nature as provided in O.C.G.A. 48-7-40(i).

(b) Beginning with taxable years that begin on or after January 1, 2004, in areas recognized and designated as Opportunity Zones under Code section 48-7-40.1(c)(4) or Military Zones under Code section 48-7-40.1(c)(2), job tax credits shall be allowed as provided in these regulations, in addition to business enterprises, to any business of any nature.

(c) The generation of tax credits for jobs created under an eligible Year One during taxable years beginning prior to January 1, 2009 will not be affected by changes in these regulations. Such tax credits will be based on law and regulation in effect at the time the Year

One jobs were created, as well as any additional jobs created in the subsequent Years Two through Six which do not generate a new Year One.

(d) The amount of any tax credit will be based on the status of the county/less developed census tract area in the year in which qualifying new full-time jobs are created and not on the status of the county/less developed census tract area in subsequent years when qualifying jobs are being maintained.

(e) When a less developed census tract area and a less developed county overlap, the following rules shall apply unless otherwise changed by the commissioner of community affairs based on a petition from a business enterprise:

1. If a business enterprise locates in the area of overlap between a tier 1 county and a less developed census tract area, rules governing the tax credit shall be based on the portions of these regulations governing tier 1 counties;

2. If a business enterprise locates or expands in the area of overlap between a tier 2 county, a tier 3 county or a tier 4 county and a less developed census tract area, the business enterprise may choose to claim the credit authorized by Code Section 48-7-40 or the credit authorized by Code Section 48-7-40.1 each applicable tax year, provided all requirements of the applicable Code Sections are met; and

3. Under no circumstances shall tax credits based on less developed counties and less developed census tract areas be added.

(f) A business enterprise claiming the tax credit under Code section 48-7-40, the county tier program, and located within the jurisdiction of a joint authority established by two or more contiguous counties will qualify for an additional \$500 tax credit for each new full-employee position created. A business enterprise located within the jurisdiction of a joint authority, however, must create the number of new jobs required by the tier status of the county in which the business enterprise is located before any tax credits will be allowed. The \$500 job tax credit authorized by this subparagraph shall be subject to all the conditions and limitations specified under these regulations. The benefits of the job tax credit authorized by the election provided for in this subparagraph shall be subject to all the conditions and limitations specified under these regulations. The Georgia Department of Community Affairs will not regulate the creation or operation of joint development authorities nor will the department define bona fide authorities for the purposes of the job tax credit program.

(g) No taxpayer shall be authorized to claim on a tax return for a given project the credit provided for in these regulations if such taxpayer claims on such tax return any of the credits authorized under Code Sections 48-7-40.2, 48-7-40.3, or 48-7-40.4, unless otherwise specifically allowed under these Code Sections.

(h) These regulations shall be applicable to eligible new jobs which meet the initial (Year One) job creation threshold for the applicable tier/census tract and are created in taxable

years beginning on or after January 1, 2009, as well as the years subsequent to such Year One in which the Year One job threshold is maintained. Taxpayers that initially claimed the credit under this Code section for any taxable year beginning before January 1, 2009 shall be governed, for purposes of all such credits claimed as well as any credits claimed in subsequent taxable years related to such initial claim, by this Code section as it was in effect for the taxable year in which the taxpayer made such initial claim.

Authority O.C.G.A. 48-7-40, O.C.G.A. 48-7-40.1, and O.C.G.A. 36-62-5.1.